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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

COLONY COVE PROPERTIES, LLC,

Plaintiff and Appellant,

v.

THE CITY OF CARSON MOBILEHOME  
PARK RENTAL REVIEW BOARD,

Defendant and Respondent.

B208994

(Los Angeles County  
Super. Ct. No. BS106676)

APPEAL from a judgment of the Superior Court of Los Angeles County.

James C. Chalfant, Judge. Affirmed.

Gilchrist & Rutter, Richard H. Close, Thomas W. Casparian and Gregory B.  
Mouroux for Plaintiff and Appellant.

Aleshire & Wynder, William W. Wynder and Sunny K. Soltani for Defendant and  
Respondent.

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Plaintiff and appellant Colony Cove Properties, LLC, doing business as Colony Cove Mobile Estates, appeals from the denial of two related petitions for writ of mandate which sought to set aside two administrative determinations by respondent The City of Carson Mobilehome Park Rental Review Board (Board). Those determinations involved the approval of a general rent increase application and a capital improvement rent increase application for amounts different than what appellant had requested.

We affirm. Substantial evidence supported the Board's disallowance of certain attorney fee expenditures as operating expenses for the purpose of imposing a fair, just and reasonable general rent increase. Substantial evidence likewise supported the Board's disallowance of certain capital improvement expenditures and its utilization of a newly-enacted interest rate provision for the purpose of imposing a fair, just and reasonable capital improvement rent increase.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### ***Rules Governing Mobilehome Park Owners in the City of Carson.***

Appellant owns Colony Cove Mobile Estates, a mobilehome park (Park) located on Avalon Boulevard in the City of Carson (City). Appellant purchased the Park in April 2006. The seniors-only Park has 403 spaces for rent, as well as a clubhouse, pool, hot tub, gym and picnic area. As a mobilehome park owner (Park Owner), appellant is governed by sections 4700 through 4711 of the Carson Municipal Code, known as the Mobilehome Space Rent Control Ordinance (Ordinance), as well as the Guidelines for Implementation of the Ordinance (Guidelines), adopted by Resolution No. 98-010.

The Ordinance places specified controls over the base rent which a Park Owner may demand for a mobilehome space. (Carson Mun. Code, § 4703.) Because mobilehome owners are particularly vulnerable, “[t]he purpose of the Ordinance is to protect the homeowners who rent spaces in mobilehome parks in the City from excessive rents and to allow Park Owners to earn a ‘just and reasonable’ or ‘fair’ return on investment.” (Guidelines, § I., subd. A.) Section 4704 of the Ordinance specifies the type of permitted rent increases for which a Park Owner may apply and the procedures

which an applicant must follow. A Park Owner may apply for a general rent increase and must demonstrate that such an increase is appropriate to allow it to continue to receive a fair return. (Carson Mun. Code, § 4704; Guidelines, § I.) It may also apply for a capital improvement rent increase to recover the cost of “improvements to a park, major refurbishment of a park and rehabilitation of a park which involve more than ordinary maintenance.” (Carson Mun. Code, §§ 4701, subd. (c) & 4704; Guidelines, § VI.) Such an increase may continue only within the time necessary for amortization of the costs of the improvement. (Carson Mun. Code, § 4704, subd. (h)(1); Guidelines, § VI., subd. B.)

In ruling on a rent increase application, the Board may consider 11 factors specified in section 4704, subdivision (g) of the Ordinance, the Guidelines and “any other relevant factors . . . .” (Carson Mun. Code, § 4704, subd. (g).) In connection with an application for a general rent increase, the Board may additionally consider a “‘gross profits maintenance analysis,’ which compares the gross profit level expected from the last rent increase granted to the park prior to the current application (‘target profit’) to the gross profit shown by the current application.” (Guidelines, § II, subd. B.) The Board has discretion to approve the application, approve a modified application or deny the application. (Carson Mun. Code, § 4704, subd. (f)(3).) According to the Ordinance: “The Board shall grant such rent increases as it determines to be fair, just and reasonable. A rent increase is fair, just and reasonable if it protects Homeowners from excessive rent increases and allows a fair return on investment to the Park Owner.” (Carson Mun. Code, § 4704, subd. (g).)

***General and Capital Improvement Rent Increase Applications.***

In March 2006, appellant’s predecessor filed a general rent increase application, seeking an increase of \$163.63 per space per month, or an increase in the range of 36.58 to 48.15 percent. The same day, appellant’s predecessor also filed a capital improvement rent increase application, seeking an increase of \$11.14 per space per month for a period of five years to recoup costs for \$211,217.74 in claimed capital improvements.

In April 2006, City staff submitted a comment report requesting additional information and explanations regarding certain claimed expenses submitted in support of

the general rent increase application. In an August 8, 2006 letter to Park residents, the City deemed both applications substantially complete and indicated that the tentative hearing date was September 27, 2006. In letters to the Park manager, Park residents expressed concern about many operating and capital expenditures, asserting that many of them were unnecessary. A formal hearing notice was sent out on September 21, 2006. Also on that day, the City staff reports for both applications were transmitted to the Board and the Park owner, and made available to the public.

City staff recommended a general rent increase of \$6.23 per space, which it found would increase yearly Park income by \$30,128.28. The staff report expressly evaluated the 11 factors set forth in section 4704, subdivision (g) of the Ordinance. The report further outlined the results of a gross profits maintenance analysis. As part of the report's analysis, City staff reclassified approximately \$130,000 in expenditures as capital improvement expenses and eliminated approximately \$613,000 in attorney fees as not related to the ongoing operation of the Park. Correspondingly, in light of the additional \$130,818.07 classified as capital improvement expenditures, City staff recommended a capital improvement rent increase of \$17.98 per space per month for a period of five years.

The next day, on September 22, 2006, appellant withdrew the capital improvement rent increase application.

***General Rent Increase Hearing and Board Resolution.***

The Board heard appellant's general rent increase application on September 27, 2006. Staff presented a summary of its report. It emphasized that it was comparing income and expense documentation from 2004 and 2005 with information from 2003 when the last rent increase was granted, which showed that the Park's gross income increased by \$24,732 during that period, operating expenses decreased by \$6,850 and gross profit increased by \$30,175. In addition, staff pointed out that the local consumer price index had increased by 9.42 percent between June 2004 and August 2006; the Park ranked second in its comparison group of three mobilehome parks in terms of base rent and would continue to rank second with staff's recommended rent increase; it had been

two years since the Park's last rent increase; during that period the park's property taxes increased 4.13 percent and its utility costs increased by 4.59 percent; and the new Park owner was providing a better level of maintenance overall. For these reasons, City staff asserted that its recommended 100 percent gross profit maintenance increase—or an increase of \$6.23 per space per month—was fair, just and reasonable.

Appellant, through counsel, argued that City staff had artificially increased the Park's profit by reclassifying approximately \$130,000 in expenses as capital improvements and by eliminating over \$613,000 in attorney fees as unrelated to the operation of the Park. Residents also spoke at the hearing in favor of the staff recommendation or a lesser increase; in particular, they noted that many of appellant's claimed legal expenses were incurred in defending suits residents brought against it. Staff also noted that Park residents received no benefit from the attorney fees incurred in connection with the environmental review of the nearby Home Depot Center.

At the conclusion of the hearing, the Board approved a \$6.23 per space per month general rent increase and adopted Resolution No. 2006-224 (2006 Resolution) which set forth an extensive assessment of Park amenities and contained an evaluation of the statutory 11 factors which supported the increase.

***Capital Improvement Rent Increase Hearing and Board Resolution.***

On October 5, 2006, appellant requested that the Board reactivate its capital improvement rent increase application. Shortly thereafter, on October 19, 2006, City staff notified Park residents of the application, specifically explaining that the recommended staff increase was higher than appellant had requested because of the reallocation of certain items from operating expenses to capital improvement expenses. The rent increase recommended by staff in an updated staff report was \$16.88 per space per month for a period of five years. The reason for the reduction from the previous \$17.98 recommendation was the City Council's adoption of Resolution No. 06-149 on October 31, 2006, which amended section VI, subdivisions B and C of the Guidelines to change the allowable interest rate on Park Owner financed capital improvements. Previously, the Guidelines had provided that "[i]n those cases where the park owner

finances the capital improvement or a part thereof with his/her own funds, interest at the legal rate of interest computed over a reasonable amount of time shall be included as a part of the capital improvement cost.” The amended provision stated: “The allowable interest rate for capital improvements shall equal the average rate for thirty year fixed rate mortgages plus one (1%) percent. The average rate shall be the rate Freddie Mac last published in its weekly Primary Mortgage Market Survey (PMMS) as of the date of the initial submission of the rent increase application.” Application of this provision to appellant’s requested rent increase yielded a 7.32 percent interest rate.

In addition to previous letters from residents objecting to the necessity and utility of some of the claimed capital improvements, residents sent additional letters and photographs to the Board. The matter was originally set for hearing on December 20, 2006. But due to excused absences, two mobilehome resident Board members and two Park Owner Board members were not present on that date. Accordingly, the hearing was continued to January 31, 2007.

At the hearing, City staff summarized its report and reiterated its recommendation of a five-year rent increase in the amount of \$16.88 per space per month, which constituted an increase ranging from 3.72 percent to 4.88 percent. Appellant complained about the interest rate change, arguing that it was unfair to apply the new rule to capital improvements purchased before the rule went into effect. Several residents testified, questioning multiple specific expenditures because they involved the purchase of unnecessary items meant only to enhance the marketability of the Park then for sale, they were excessive, the items were not desired by the residents and there was no competitive bidding. Board members asked several questions of one of the residents, a retired contractor, who estimated that reducing the rent increase request by \$123,480 would eliminate many of the unnecessary and excessive expenditures.

After the public comment portion of the hearing closed, Board members expressed concern about the expenditures. In response to a Board inquiry as to whether the Board had discretion to disallow a rent increase for expenditures that fell within the Ordinance’s definition of capital improvements, City staff stated that the Board had “discretion to

consider matters or other factors that you as the Board believe are relevant in granting a fair, just and reasonable rent increase.” Noting that it typically does not delete otherwise authorized capital improvement expenses from a mobilehome park owner’s rent increase application, staff stressed the importance of the Board’s determination through the hearing process, noting that “if you hear something here tonight that gives you pause or gives you reason to do something different than the Staff recommendation, then the Board is allowed to do that.” Board members at that point engaged in a further discussion, with several members indicating that they did not believe certain specific expenses were reasonable or necessary on the basis of both resident comments and their personal observations of the Park.

Ultimately, a Board member moved to approve a capital improvement rent increase of \$693.26 per space as the principle amount, which it deemed a compromise amount between what appellant was seeking (a total amount of \$846 per space) and what the residents calculated was reasonable (a total amount of \$544 per space). The Board approved the motion and adjourned the meeting for one week to enable staff to calculate the per space payments under a five-year amortization period.

Following proper notice, the Board reconvened on February 7, 2007. In explaining certain provisions of the draft resolution he had prepared for the Board, the City Attorney stated: “In listening to your deliberations and in considering the evidentiary record and based on the deliberations that you reached in excluding certain expenses that have been properly characterized as capital improvements on the grounds that they were neither necessary or reasonable or did not constitute actual improvements, we have concluded that there has been a mathematical error in your computation which can’t be supported by the evidence. And so we went through in the draft resolution and actually identified the expenses disallowed by specific category . . . . [T]hat number totals \$63,134 which is different than the—slightly higher than the—than the \$61,740.” The recalculation amounted to a seven-cent reduction in the increased monthly payment, going from \$13.83 to \$13.76 per month for five years.

The Board approved Resolution No. 2007-245 (2007 Resolution) which imposed a capital improvement rent increase on Park residents of \$13.76 per space per month for a period of five years. The 2007 Resolution identified the components of the \$63,134 in expenses that had been disallowed as “unnecessary, unreasonable, and that did not, in fact, constitute an ‘improvement’ to the Park,” comprised of \$17,000 for the removal and replacement of certain landscaping, \$19,302 for the replacement of park entry sign and \$1,120 for its electrical hookup, \$6,212 for the replacement of clubhouse furniture, \$17,000 for pool table replacement, and \$2,500 for new carpeting.

***Petitions for Writ of Administrative Mandate.***

In December 2006, appellant filed a verified petition for writ of administrative mandate seeking to vacate the 2006 Resolution on the ground that the Board failed to follow the Ordinance in declining to consider over \$600,000 in attorney fees and \$15,000 in expenses in approving the general rent increase application. The City answered, denying the majority of the allegations and asserting several affirmative defenses. In May 2007, appellant filed a second verified petition for writ of administrative mandate seeking to vacate the 2007 Resolution on the grounds that the Board improperly eliminated approximately \$63,000 in capital improvement expenses from the application and improperly applied an interest rate provision in the Guidelines that was adopted after it had filed its petition. Again, the City’s answer denied the majority of the allegations and asserted several affirmative defenses.

The trial court consolidated the matters; the parties submitted briefing on appellant’s motion for a petition for writ of mandate and lodged the administrative record. At the conclusion of an April 21, 2008 hearing, the trial court adopted its tentative ruling which granted in part and denied in part the motion. It granted the motion and issued a limited remand, directing the Board demonstrate its analysis of the proper classification of \$15,526.60 of expenditures which had been characterized as capital improvements rather than ordinary maintenance expenditures. In all other respects, it denied the motion.

In connection with the general rent increase application, the trial court ruled that the Board properly disallowed \$613,906.04 in attorney fees because they were not directly incurred in operating the Park. With respect to attorney fees incurred in considering a potential action under the California Environmental Quality Act, Public Resources Code section 21000 et seq. (CEQA), related to the environmental impact of the nearby Home Depot Center, the trial court determined: “No matter how beneficial such an action might be for the general environmental concerns of Park residents, the Board was entitled to conclude that the \$38,228.28 was not directly incurred for Park operation.” It similarly reasoned that \$575,677.76 in attorney fees incurred in defending a lawsuit brought by 14 Park residents was not related to the ongoing operation of the Park. Emphasizing that “[i]t is the nature of the negligent maintenance claim, not its outcome, which makes the attorney’s fees incurred in defending it untenable as directly incurred in Park operation,” the trial court reasoned that “[i] would hardly be appropriate for [appellant] to . . . effectively bill the residents for attorney’s fees that would not have been incurred but for the negligent maintenance of the predecessor owner.” Accordingly, the trial court found appellant failed to show that substantial evidence did not support the Board’s decision.

With respect to the capital improvement rent increase application, the trial court commented that a compromise figure—one that merely split the difference between the amount requested by appellant and that sought by the residents—would have been inappropriate. But the trial court acknowledged that at the second phase of the hearing the Board adopted a rent increase that was supported by substantial evidence. The 2007 Resolution disallowed five categories of expenses that residents had characterized as unreasonable and unnecessary and about which the Board had expressed concern. The trial court determined that the Board had discretion to disallow these items in granting a rent increase that it found to be fair, just and reasonable.

The trial court also upheld the Board’s application of the interest rate adopted by the Guidelines after the capital improvement rent increase application was submitted. It concluded that appellant failed to make any showing to overcome the general rule that a

landowner must comply with regulations adopted after an application for an agency permit. Nor did appellant show that it had any vested right to any particular interest rate, given other provisions in the Guidelines granting the Board discretion calculate amortized costs in any manner necessary to protect mobilehome park residents.

In May 2008, the trial court entered judgment. This appeal followed.

## DISCUSSION

Appellant challenges the Board's approval of the 2006 Resolution to the extent it disallowed approximately \$613,000 in attorney fees and the 2007 Resolution to the extent the approved increase was based on a compromise figure and calculated using an interest rate provision implemented by the Guidelines during the pendency of its rent increase application.

On appeal, we review the administrative decision of the Board, not the trial court's ruling. (*TG Oceanside, L.P. v. City of Oceanside* (2007) 156 Cal.App.4th 1355, 1370.) Generally, we review the Board's findings for substantial evidence. (*MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 218; *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Bd.* (1999) 70 Cal.App.4th 281, 287 (*Carson Harbor Village*).) "The substantial evidence test requires the court to begin with the presumption that the record contains evidence to sustain the board's findings of fact. [Citation.]" (*Carson Harbor Village, supra*, at p. 287.) We independently review the Board's decision to the extent it was premised on an interpretation or application of the Ordinance or the Guidelines. (*TG Oceanside, L.P. v. City of Oceanside, supra*, at p. 1371.) Nonetheless, "[t]he board's interpretation of an ordinance's implementation guidelines is given considerable deference and must be upheld absent evidence the interpretation lacks a reasonable foundation. [Citation.] The burden is on the appellant to prove the board's decision is neither reasonable nor lawful. [Citation.]" (*Carson Harbor Village, supra*, at p. 287; cf. *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 328 [landlord carries a heavy burden of making a

convincing showing that an agency's decision is invalid because it is unjust and unreasonable in its consequences].)

“In reviewing the decision of the board, an appellate court must consider whether substantial evidence indicates the rental rates provided a ‘fair rate of return on the cost of that applicant’s equity investment.’” (*Carson Harbor Village, supra*, 70 Cal.App.4th at p. 287; accord, *TG Oceanside, L.P. v. City of Oceanside, supra*, 156 Cal.App.4th at p. 1371.)

### **I. Governing Rent Control Principles.**

“Constitutionally valid rent control ordinances must be reasonably calculated to eliminate excessive rents and provide landlords a just, fair and reasonable return on their property. [Citations.]” (*Carson Harbor Village, supra*, 70 Cal.App.4th at p. 288.)

“Under broad constitutional tolerance, California cities may enact various forms of residential rent control measures to satisfy the just, fair and reasonable rent standard. [Citation.] Public administrative bodies, charged with implementing and enforcing rent control measures, are not obliged by either state or federal constitutional requirements to employ any prescribed formula or method to fix rents.” (*Id.* at p. 289.) Thus, “the actual method utilized to regulate rents is immaterial so long as the result achieved is constitutionally acceptable.” (*Id.* at p. 290.)

In accordance with these principles, the Ordinance provides: “The Board shall grant such rent increases as it determines to be fair, just and reasonable. A rent increase is fair, just and reasonable if it protects Homeowners from excessive rent increases and allows a fair return on investment to the Park Owner. The Board shall consider the following factors and any Guidelines adopted by the City Council, as well as any other relevant factors, in making its determination and no one (1) factor shall be determinative.” (Carson Mun. Code, § 4704, subd. (g).) The 11 nonexclusive factors the Board may consider are: (1) changes in the Consumer Price Index (CPI); (2) the rent charged for comparable mobilehome spaces in the city; (3) the length of time since the last hearing and decision by the Board on a rent increase application by the applicant; (4) capital improvements; (5) changes in property taxes or other taxes; (6) changes in the

rent paid by the applicant for the land; (7) changes in utility charges paid by the applicant; (8) changes in reasonable operating and maintenance expenses; (9) the need for repairs other than those required by ordinary wear and tear; (10) the amount and quality of services provided to tenants; and (11) any existing lease with affected tenants. (*Ibid.*)

As explained in more detail by the Guidelines, “[t]he Ordinance assumes that the profit earned by park owners when the Ordinance was adopted provided a fair return because it was based on rents chosen by the owners prior to regulation . . . . The Ordinance, therefore, uses the factors in § 4704(g) to focus on changes in a park’s income, expenses and circumstances, including changes in the general economy, to determine whether a rent increase is appropriate to allow the owner to keep earning a fair return, and when a rent increase is appropriate to determine the amount of that increase.” (Guidelines, § I., subd. C.) “No one factor in the Ordinance is determinative and the factors must be considered together and balanced in light of the purposes of the Ordinance and all the relevant evidence. The Ordinance does not mandate the use of any formula or guarantee increases equal to the increase in the CPI, or any percentage of the CPI.” (Guidelines, § I., subd. D.) Nothing in the Ordinance guarantees a Park owner the right to a rent increase. Rather, the Ordinance and the Guidelines establish a process, giving “each park owner . . . the right to apply for an increase on the ground that existing rents do not allow the park owner to earn a fair return, as set forth in § IV below, in addition to an increase based on the factors in § 4704(g).” (Guidelines, § I., subd. F.)

“In evaluating a rent increase application, the Board may consider, in addition to the factors specified in § 4704(g) of the Ordinance, a ‘gross profits maintenance analysis,’ which compares the gross profit level expected from the last rent increase granted to the park prior to the current application (‘target profit’) to the gross profit shown by the current application. This analysis will be included in the staff report to the Board in addition to analysis concerning the eleven factors when there is sufficient data to permit such an analysis. [¶] The analysis is intended to provide an estimate of whether a park is earning the profit estimated to provide a fair return, as established by the immediately prior rent increase, with some adjustment to reflect any increase in the

CPI. The analysis is an aid to assist the Board in applying the factors in the Ordinance and is to be considered together with the factors in § 4704(g), other relevant evidence presented and the purposes of the Ordinance. The analysis is not intended to create any entitlement to any particular rent increase.” (Guidelines, § II., subd. B.)

We defer to the City’s ability to enact a comprehensive mobilehome rent control ordinance as a “rational curative measure[] to counteract the effects of mobilehome space shortages that produce systematically low vacancy rates and rapidly rising rents. (*Carson Mobilehome Park Owners’ Assn. v. City of Carson* (1983) 35 Cal.3d 184, 189, fn. 4.)” (*Carson Harbor Village, supra*, 70 Cal.App.4th at p. 290.) We likewise defer to the Board’s construction and application of the Ordinance. As aptly stated in *Carson Harbor Village, supra*, at page 290: “The Board’s interpretation of Carson’s rent control laws merits great weight. We must therefore defer to the Board’s interpretation and application of the Ordinance and Implementation Guidelines unless we find its construction lacks substantial evidence to support its findings.”

## **II. Substantial Evidence Supported the Board’s Approval of the 2006 Resolution.**

In the 2006 Resolution, the Board undertook a comprehensive review of the statutory factors used to evaluate rent increases. In particular, the Board focused on evidence that the change in the CPI since the Park’s last rent increase was 9.42 percent; the Park ranked second in its comparison group of three mobilehome parks in terms of average base rent; the Park’s last rent increase was 25 months ago, at which time it received a general rent increase of \$4.64 per space, or 1.05 to 1.38 percent; during the period following that increase the Park’s gross income increased by 1.23 percent and reasonable operating and maintenance expenses decreased by .52 percent, yielding a net increase in gross profit of \$30,175 or 4.39 percent; and the Park was providing a better level of maintenance, upkeep and management than in years prior. In light of this evidence, the Board determined that it was appropriate to award a general rent increase in the amount of \$6.23 (or 1.39 to 1.83 percent) per space, as this figure increased Park income by \$30,128.28 per year and equaled 100 percent of the deficit in the estimated gross profit maintenance target for 2005.

Appellant's only challenge to the 2006 Resolution is the Board's acceptance of a City staff recommendation that \$613,906.04 in attorney fees be excluded from appellant's general operating expenses. The Guidelines provide: "Reasonable attorneys' fees directly incurred in operating a park are generally allowable operating expenses. Attorneys' fees incurred in presenting applications to the Board, for enforcing court rules or for eviction are examples of fees that are allowable operating expenses. Examples of attorneys' fees which are not allowable are those incurred in connection with challenging the Ordinance or decisions of the Board or in connection with litigation seeking to recover damages or reimbursement from third parties or the City." (Guidelines, § II., subd. A.2.i.) Disallowing attorney fees as part of a rent increase calculation is permissible. Addressing a more restrictive ordinance that required a city to exclude from a mobilehome park owner's "operating expenses '[a]ttorneys fees and costs incurred in proceedings before the Commission, or in connection with legal proceedings against the Commission or challenging this [ordinance],'" the court in *Oceanside Mobilehome Park Owners' Assn. v. City of Oceanside* (1984) 157 Cal.App.3d 887, 909, observed that the provision reasonably prevented park owners from passing the burden of those fees to their tenants in the form of higher rents and mirrored the traditional American Rule denying litigants attorney fees in the absence of express authority.

The \$613,906.04 excluded amount was comprised of two distinct components. First, City staff recommended the reduction in expenses in the amount of \$38,228.28 on the basis that "these expenses are not related to the ongoing operation of the park, but instead were related to the preparation to file a lawsuit against the University and/or Anschutz regarding the expansion of the Home Depot Center. The suit was never filed." At the Board hearing, City staff reminded the Board of its discretion with respect to that recommendation, stating that "[t]he Mobilehome Park Rental Review Board may wish to review these expenses and their reasonable, excuse me, reasonableness and take whatever action, inclusion or exclusion, which it deems to be appropriate."

The Board expressly reviewed the \$38,228.28 amount. At the beginning of the hearing, all speakers were sworn. The Board considered testimony from appellant that

the amount was incurred to review environmental impact reports (EIR) regarding the development of the Home Depot Center, to assess mitigation of those impacts, to negotiate with the developer and to determine possible challenges to the EIR. According to appellant: “These expenses were directly related to the operation of the park because they were incurred in an effort to evaluate and mitigate the effects of the developments being conducted at the Home Depot Center such as traffic, parking, noise, sewer capacity, the effect of these impacts on the residents of the park and are clearly allowable expenses.” In response, City staff discussed its recommendation, noting there was no evidence that the attorney fees were expended to do anything except protect appellant’s pecuniary interest in the Park. Staff further observed that appellant’s expenditures failed to yield any benefits to the residents in the form of developer concessions or required mitigation measures. A resident also testified that the attorney fees were incurred in preparation of a lawsuit concerning the Home Depot Center that was never filed. After Board members asked several questions of the speakers and the City Attorney—including questions directly addressing the attorney fee exclusion—the Board voted to adopt the \$6.23 rent increase.

These circumstances mirror those in *Carson Harbor Village, supra*, 70 Cal.App.4th 281, where the court found that substantial evidence supported the Board’s disallowing as an expense \$100,000 in attorney fees related to wetlands contamination litigation. There, the Board disallowed as an operating expense attorney fees incurred for the investigation, research and preparation of a lawsuit seeking to recover the costs of the wetlands remediation from various corporate and governmental entities, as well as attorney fees incurred in endeavoring to recover cleanup costs from insurers in the face of environmental damage policy exclusions. (*Id.* at pp. 293–294.) Simply stated, “[t]he Board found the legal services underlying those attorneys’ fees were not provided in connection with regular mobilehome park operations.” (*Id.* at p. 294.)

In affirming the disallowance, the court observed the administrative record showed that the Board received testimony on the attorney fee issue, asked questions of the interested parties, distinguished situations where attorney fees had been allowed as

operating expenses and weighed the arguments supporting each position. (*Carson Harbor Village, supra*, 70 Cal.App.4th at p. 294.) The court concluded: “We find substantial evidence in the administrative record supports the Board’s findings. A court should not substitute its judgment for that of the local mobilehome rent control board even though the court may arrive at different findings of fact after hearing the case on its merits. [Citation.] We are therefore unwilling to overturn the Board’s decision based on its careful weighing of evidence and interpretation of expenses directly connected with park operations.” (*Ibid.*) Here, too, substantial evidence supported the Board’s determination that attorney fees incurred in the evaluation and potential prosecution of an environmental action were not directly incurred in operating the Park, but rather, were more akin to those incurred seeking to recover reimbursement from a third party. (See Guidelines, § II, subd. A.2.i.; see *Lindborg-Dahl Investors, Inc. v. City of Garden Grove* (1986) 179 Cal.App.3d 956, 961, fn. 7 [“[c]ourts may reverse an agency’s decision only if, based on the evidence before the agency, a reasonable person could not reach the conclusion reached by the agency”].)

We find no merit to appellant’s contention that the Board failed to make the requisite findings to support its disallowance of the \$38,228.28 in attorney fees. (See *Honey Springs Homeowners Assn. v. Board of Supervisors* (1984) 157 Cal.App.3d 1122, 1151 [explaining that implicit within the substantial evidence review of an agency’s action is the requirement that the agency “set forth factual findings sufficient to bridge the analytic gap between the raw evidence and the ultimate decision”].) Contrary to appellant’s assertion that the Board perfunctorily adopted the City staff recommendation, the administrative record demonstrates that the Board considered the presentation of City staff, listened to the City Attorney’s evaluation of the disallowance and specifically inquired about precedent in connection with other mobilehome parks, asking whether attorney fees incurred to evaluate environmental impacts are typically charged back to residents. The Board’s express consideration of the attorney fee disallowance prior to its adoption of the \$6.23 per space rent increase was sufficient to show that its findings were made on the basis of discussion and deliberation. (See *Topanga Assn. for a Scenic*

*Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 516 [one purpose of a findings requirement is to encourage an administrative body to draw legally relevant subconclusions that support its ultimate conclusion].)

Nor do we find merit to appellant's remaining contention that there was insufficient evidence to support the disallowance of the \$38,228.28. We agree with the trial court's conclusion that "the evaluation and prosecution of a CEQA action is not part of the normal, everyday operation of a mobile home park." Appellant's argument focuses on the fact that a CEQA challenge is unlike a lawsuit against a third party seeking damages or reimbursement—the example of the type of action for which attorney fees may be disallowed as provided in the Guidelines. (See Guidelines, § II, subd. A.2.i.) But the applicable provision of the Guidelines is phrased broadly, providing the circumstances under which attorney fees are "generally allowable" and citing "[e]xamples" of the type of actions for which the fees incurred are not allowable. (*Ibid.*) There is no indication in the Guidelines that these examples were intended to be exclusive. (See *County of Santa Cruz v. State Bd. of Forestry* (1998) 64 Cal.App.4th 826, 841 [where statute permitted "emergencies" to be defined by the administrative board and provided that the list of examples included but was not limited to three conditions, "the Legislature plainly intended that the three examples of emergencies provided in the statutes were not to be deemed exclusive"].)

Moreover, substantial evidence showed that the \$38,228.28 in attorney fees was incurred for matters that more closely approximated a disallowable Ordinance challenge or a third party lawsuit, as opposed to a generally allowable Board application or eviction. (See Guidelines, § II, subd. A.2.i.) A review of the applicable billing records identified by appellant shows entries for services including "[l]egal research on strategy to bring a lawsuit to successfully attack Carson's mobile home rent control ordinance"; "[c]onference . . . re: future strategies for challenging Home Depot SEIR"; "[c]onference . . . re: SEIR comments and litigation options"; "review requirements for CEQA challenge notification and begin drafting notification letter"; "[r]evise letter threatening litigation"; "[r]esearch proper parties for litigation to challenge EIR"; and "[r]eview and

analyze all documents in file in preparation for drafting CEQA complaint; outline and begin drafting complaint.” “[W]here reference to the administrative record informs the parties and reviewing courts of the theory upon which an agency has arrived at its ultimate finding and decision it has long been recognized that the decision should be upheld if the agency “in truth found those facts which as a matter of law are essential to sustain its . . . [decision].” [Citations.]’ [Citation.]” (*Sierra Club v. California Coastal Com.* (1993) 19 Cal.App.4th 547, 556; see also *Lindborg-Dahl Investors, Inc. v. City of Garden Grove*, *supra*, 179 Cal.App.3d at p. 963 [reviewing court may look to the administrative record to determine the findings upon which the agency decision is based].) In light of the evidence before the Board, appellant has failed to meet its burden to show that substantial evidence did not support the Board’s disallowance of \$38,228.28 in attorney fees as operating expenses.

We reach the same conclusion with respect to the Board’s disallowance of \$575,677.76 in attorney fees incurred in defending a lawsuit brought by Park residents. The City staff explained that “these expenses are not related to the ongoing operation of the park, but instead were related to a suit filed by some of the park residents and was brought about by the alleged failure of prior park management to properly operate and maintain the park and enforce existing park rules. The suit was settled after the expenditure of nearly \$700,000 over the past two years on just attorney related expenses alone.” A resident further testified that he concurred with the staff recommendation, stating that the attorney fees were not related to the Park’s ongoing operation, but rather, were related to suit filed by Park residents “brought about by failure [of] prior park management to properly operate and maintain the park . . . .”

At the hearing, the City’s housing program manager explained that this type of expense would not recur, as that and related lawsuits had been brought against the Park’s prior owner. He further stated that he and City staff had spent a couple of hours discussing the suit with the Park’s insurers and attorneys, and “about two weeks later after I discussed all the things I was aware of, and was willing to testify to, all of a sudden there was a settlement agreement, which I knew was pushed by the insurers of the

park. So staff believes, yes, there was a reason for them to settle because I think they were afraid of what may happen.” Staff asked the Board to make the lawsuit’s settlement agreement a part of the record. The City Attorney also opined at the hearing that the attorney fees should be disallowed on policy grounds, stating: “We do not believe that the guidelines ever intended a park owner to defend a lawsuit for its failure to operate and maintain the park and then turn around and attempt to charge the residents its legal fee for defending itself from—from its own claimed wrongful conduct.”

On the basis of this information, the Board could reasonably conclude that attorney fees spent in defending a potentially meritorious suit alleging Park mismanagement were not “directly incurred in operating a park . . . .” (Guidelines, § II, subd. A.2.i.) “The board’s interpretation of an ordinance’s implementation guidelines is given considerable deference and must be upheld absent evidence the interpretation lacks a reasonable foundation. [Citation.] The burden is on the appellant to prove the board’s decision is neither reasonable nor lawful.” (*Carson Harbor Village, supra*, 70 Cal.App.4th at p. 287; accord, *Auerbach v. Los Angeles County Assessment Appeals Bd. No. 2* (2008) 167 Cal.App.4th 1428, 1442.)

Appellant argues that the Board was not entitled to draw any adverse inference about the merits of the lawsuit from statements by a resident and City staff, or the settlement agreement itself. But we agree with the trial court that whether the lawsuit had merit was not dispositive of the question of whether the attorney fees should be deemed operating expenses for the purpose of a general rent increase application. Rather, “[i]t is the nature of the negligent maintenance claim, not its outcome, which makes the attorney’s fees incurred in defending it untenable as directly incurred in Park operation.” We agree with the trial court’s further observation that “[i]t would hardly be appropriate for Petitioner to [] effectively bill the residents for attorney’s fees that would not have been incurred but for the negligent maintenance of the predecessor owner.” (See *MHC Operating Limited Partnership v. City of San Jose, supra*, 106 Cal.App.4th at p. 219 [agency interprets a regulation in context and the deference accorded that interpretation may depend on the presence or absence of factors supporting it].) Appellant failed to

show that it was unreasonable or unlawful for the Board to consider the nature of the action for which the attorney fees were incurred in disallowing those fees for the purpose of calculating a general rent increase. (See *Carson Harbor Village, supra*, 70 Cal.App.4th at p. 294 [affirming Board’s disallowance of attorney fees associated with a wetlands remediation project as not being directly related to regular park operations and observing that courts should not substitute their judgment for that of a local mobilehome rent control board even though the court could construe the facts differently].)

### **III. Substantial Evidence Supported the Board’s Approval of the 2007 Resolution.**

In the 2007 Resolution, the Board approved a capital improvement rent increase. Appellant’s original capital improvement rent increase application sought an increase of \$11.14 per space per month for a period of five years. Though the 2007 Resolution imposed a rent increase which exceeded appellant’s request—\$13.76 per space per month for a period of five years—that figure took into account an additional \$130,818.07 that had been reclassified from operating expenses to capital improvements. Appellant contends that the \$13.76 figure is flawed because substantial evidence did not support the disallowance of \$63,134 in expenses and the Board utilized an improper interest rate. We find no merit to either contention.

#### **A. Substantial Evidence Supported the Board’s Disallowance of Itemized Capital Improvement Expenditures.**

The Guidelines define the type of expenses that may be claimed as a capital improvements, specify amortization periods for various improvements and, “based upon the circumstances of a particular case,” further provide “the Board shall have the discretion to determine capital improvement costs or appropriate amortization in any alternative manner necessary to protect the residents of the mobilehome park from excessive rents while ensuring the park owner receives a fair return.” (Guidelines, § VI, subd. B.4.)

The 2007 Resolution determined that \$63,134 of appellant’s claimed \$341,818.07 in capital improvement expenses should be disallowed because such expenses “represented expenses for work performed, or other items, at the Park that were

unnecessary, unreasonable, and that did not, in fact, constitute an ‘improvement’ to the Park or its amenities.” The Board specifically identified the five categories of expenses that comprised the disallowance: (1) \$17,000 for the removal of certain aesthetic landscaping and the subsequent planting of bougainvillea and additional lawn; (2) \$19,302 for the removal of a sizeable and legible Park entry sign and the replacement of a smaller sign that was difficult to read, together with \$1,120 for the electrical hookup; (3) \$6,212 for the removal of clubhouse furniture that had not exceeded its useful life and the replacement of furniture that was less comfortable and less functional; (4) \$17,000 for the removal of pool tables and other appliances that were fully functional at the time of their replacement; and (5) \$2,500 for the installation of carpeting and padding in the clubhouse, for which improper contracting procedures were utilized, rendering a warranty dispute likely.

Substantial evidence supported the Board’s action. Before the hearing on the application, the Board received numerous letters and photographs from Park residents complaining that the capital improvement expenditures were unnecessary. Approximately 60 letters included targeted complaints about specific expenditures, including landscaping, the entrance sign, clubhouse furniture, pool tables and clubhouse carpeting. Consistent with this correspondence, at the initial hearing on January 31, 2007, several Park residents testified that many of the claimed expenses were unnecessary. For example, Burt Roberts, who identified himself as an architect, engineer and contractor, questioned whether several of the expenditures were necessary, indicated that they were too costly and inquired as to why residents were not consulted before the expenditures were made. More specifically, he inquired as to why new pool tables were necessary and added that he noticed “several things like complete trellises being replaced where only ten percent of the members were distressed at all . . . .” Resident Shirley Clark similarly questioned specific expenditures, explaining that the replacement of the clubhouse furniture and pool tables was done for the purpose of selling the Park and did not inure to the benefit of the residents. Residents Frank Mulrooney and Marcia

Hatzenbuhler similarly testified that the clubhouse improvements involved the replacement of items that did not need to be replaced.

Summarizing the Park residents' concerns, retired general contractor John Goolsby testified about several expenditures made by appellant which he opined should not be charged back to the Park residents. He identified the \$19,300 spent on the entrance sign which contained small letters and could not be read at night. He testified about the landscaping that was removed and replaced, stating he did not understand the necessity of replacing beautiful flowers with vines and grass. He complained about expending \$17,000 for four new pool tables, when minor repairs would have sufficed. He found no necessity for clubhouse improvements, including painting and new furniture in the amount of \$6,212; in particular, he did not understand the need to replace round tables with square ones. He criticized spending over \$30,000 to install new pool decking. He also complained about appellant's having purchased clubhouse carpeting from one entity and having it installed by another, thus eliminating any warranty protection. The monetary value of the expenditures Mr. Goolsby identified as unnecessary was \$123,480, yielding a capital improvement rent increase of \$10.78 per month per space for five years.

The Board asked questions of City staff and Mr. Goolsby. In response to a Board member's question, the housing manager indicated that there was precedent—albeit limited—for disallowing capital improvement expenditures. Board members asked Mr. Goolsby how he arrived at his figures and confirmed that his complaints went beyond the absence of competitive bidding.

At the close of the public hearing, City staff advised that the fact the staff report premised the recommended rent increase on the total amount of capital improvement expenditures did not resolve the question before the Board: “[I]t’s up to you this evening to decide whether or not those are fair, just and reasonable and should be allowable expenses. All I’ve done is verified the expenses. To the best of my knowledge, all of those funds were expended, all of those items are in the park to the best of our knowledge. They all appear to be reasonably priced. Now, as far as whether all of them

were needed or not, that is the issue for the Board to decide.” The City Attorney likewise confirmed that the Ordinance gave the Board discretion to consider whatever factors it deemed relevant in granting a fair, just and reasonable rent increase. Board members thereafter engaged in a discussion, with some commenting about the difficulty of evaluating in hindsight whether certain capital improvement expenditures should have been made and others willing to accept Mr. Goolsby’s proposed reduction in its entirety. One Board member moved to accept Mr. Goolsby’s proposed reduction, but the motion never went to a vote. Instead, acknowledging that some of the challenged items such as pool tables and bougainvillea seemed unnecessary, the Board determined that a capital improvement rent increase of approximately \$695 per space—the mid-point between appellant’s request of \$846.08 per space and Mr. Goolsby’s requested \$540.44 per space—was fair, just and reasonable. Recognizing that it would be necessary to resume the hearing for the purposes of City staff providing the appropriate calculations, the Board approved a capital improvement rent increase of \$693.26 per space.

One week later, the hearing resumed. The City Attorney explained that the draft of the 2007 Resolution before the Board had been prepared after City staff considered the evidentiary record and listened to the Board’s deliberations. As a result, the 2007 Resolution provided for the disallowance of five categories of items on the grounds they were neither necessary nor reasonable. Because the disallowed expenditures totaled \$63,134, which was \$1,394 more than one-half of the difference between appellant’s request and the residents’ proposed reduction, the Board moved to reconsider its prior determination. Appellant and Mr. Goolsby were given an additional opportunity to speak before the Board. Thereafter, the City Attorney reiterated that the proposed resolution was based on the evidence and the Board’s deliberations, disallowing items that the Board had indicated were questionable and allowing certain items that the residents asked to be disallowed. At that point the Board voted to approve the 2007 Resolution.

Appellant contends that substantial evidence did not support the Board’s disallowing \$63,134 in expenditures, characterizing the Board’s decision as based on fabricated deliberations. In *Topanga Assn. for a Scenic Community v. County of Los*

*Angeles, supra*, 11 Cal.3d at page 515, the court explained that implicit in a substantial evidence review of an agency's action "is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. If the Legislature had desired otherwise, it could have declared as a possible basis for issuing mandamus the absence of substantial evidence to support the administrative agency's action. By focusing, instead, upon the relationships between evidence and findings and between findings and ultimate action, the Legislature sought to direct the reviewing court's attention to the analytic route the administrative agency traveled from evidence to action." In other words, the court must be able to do more than speculate as to the agency's basis for its decision. (*Ibid.*)

Contrary to appellant's assertion, we need not speculate as to the basis for the Board's disallowance. The Board received correspondence and heard testimony from multiple residents regarding the unnecessary and unreasonable nature of the disallowed expenditures. In particular, the Board received information from Mr. Goolsby itemizing the cost of the challenged items. On the other hand, the Board also received City staff's recommendation that all expenditures be approved as allowable and reimbursable capital improvements. In the face of this conflicting information, the Board endeavored to arrive at a rent increase that was "fair, just and reasonable. . . . protect[ing] Homeowners from excessive rent increases and allow[ing] a fair return on investment to the Park Owner." (Carson Mun. Code, § 4704, subd. (g).) To achieve this objective, the Board exercised its discretion, as provided in the Guidelines, "to determine capital improvement costs . . . in any alternative manner necessary to protect the residents of the mobilehome park from excessive rents while ensuring the park owner receives a fair return." (Guidelines, § VI, subd. B.4.)

Though the Board initially determined that the mid-point between the City staff recommendation and the residents' request yielded an appropriate rent increase, it thereafter evaluated and approved the subsequent itemized disallowance of some but not all of the expenditures challenged by the residents. Indeed, the Board member who moved to approve the rent increase commented at the resumed hearing that he

appreciated City staff’s “laying out the different items that were to be included in this whole thing. It does help. It was hard to do that as we sat here, you know, with so many different things. But I appreciate your laying these things out for me.” Thereafter, when the Board was ready to approve the 2007 Resolution, the moving Board member stated: “I made the motion last time and I believe this resolution does lay out my intent as I indicated last—last time.” At the resumed hearing, the Board plainly bridged the gap between the evidence and its findings, and, accordingly, substantial evidence supported the 2007 Resolution.

***B. The Board Properly Applied the Revised Guideline to the 2007 Resolution.***

Appellant’s final challenge involves the Board’s utilization of a Guideline interest rate provision that was adopted by the City Council after appellant’s capital improvement rent increase application was deemed complete in August 2006. Before appellant withdrew the application in September 2006, City staff had made its recommendations employing the interest rate Guideline then in effect, which had provided that interest at the legal rate, or 10 percent, computed over a reasonable period of time be included as part of the capital improvement cost. After appellant reactivated its capital improvement rent increase application in October 2006, the recommendation in the subsequent City staff report was reduced from \$17.98 to \$16.88 per month per space as a result of modifications to the Guidelines revising the allowable interest rate on financed capital improvements. Instead of interest at the legal rate, the Guidelines provided that the “allowable interest rate for capital improvements shall equal the average rate for thirty year fixed rate mortgages plus one (1%) percent. The average rate shall be the rate Freddie Mac last published in its weekly Primary Mortgage Market Survey (PMMS) as of the date of the initial submission of the rent increase application.” (Guidelines, § VI., subd. C.) City staff calculated that the Guideline yielded a 7.32 percent interest rate.

Relying on *Palacio de Anza v. Palm Springs Rent Review Com.* (1989) 209 Cal.App.3d 116, 120 (*Palacio*), appellant contends that the interest rate modification constituted an invalid impairment of a vested right. A “vested right” is typically defined

as a preexisting right which ““is deemed to be of sufficient significance to preclude its extinction or abridgement by a body lacking *judicial* power.”” (*Whaler’s Village Club v. California Coastal Com.* (1985) 173 Cal.App.3d 240, 252.) Whether an administrative decision substantially affects a fundamental vested right is decided on a case-by-case basis, “and there is no fixed formula which guarantees a predictably exact ruling in each case. The essence of the determination is to protect the fundamental rights of the individual from abrogation without judicial, as opposed to administrative, review.” (*San Marcos Mobilehome Park Owners’ Assn. v. City of San Marcos* (1987) 192 Cal.App.3d 1492, 1499 (*San Marcos*).) Courts often examine two factors to determine whether a right should be considered fundamental and vested: (1) the character and quality of its economic aspect, or (2) the character and quality of its human aspect. (*Cooper v. Kizer* (1991) 230 Cal.App.3d 1291, 1296–1297.) In analyzing the fundamental nature of the right involved, courts are particularly responsive to “the human as opposed to the purely economic dimension of rights affected by administrative action” (*Frink v. Prod* (1982) 31 Cal.3d 166, 177) and generally give less weight to the preservation of purely economic privileges (*San Marcos, supra*, at p. 1499). In sum, the essential question before us is whether the affected right is of such sufficient significance to preclude its extinction or abridgment by a body lacking judicial power. (*301 Ocean Ave. Corp. v. Santa Monica Rent Control Bd.* (1991) 228 Cal.App.3d 1548, 1556; *San Marcos, supra*, at p. 1501.)

We must answer that question negatively. “Administrative decisions which result in restricting a property owner’s return on his property, increasing the cost of doing business, or reducing profits are considered impacts on economic interests rather than on fundamental vested rights. [Citations.]” (*E.W.A.P., Inc. v. City of Los Angeles* (1997) 56 Cal.App.4th 310, 325–326 [city’s enactment of a zoning restriction that reduced the operating hours of an adult bookstore had a purely economic affect that did not impair the store owner’s vested rights]; see also *Champion Motorcycles, Inc. v. New Motor Vehicle Bd.* (1988) 200 Cal.App.3d 819, 825 [termination of franchisee’s product line had an economic impact that did not affect a fundamental vested right].) In *Standard Oil Co. v. Feldstein* (1980) 105 Cal.App.3d 590, 604–605, the court explained in detail why a

permit condition restricting the plaintiff's ability to operate three rather than four refinery units affected purely economic interests: "In the case at bench, we are concerned with a 'purely economic' privilege toward the preservation of which our Supreme Court has been 'manifesting slighter sensitivity.' There is no contention that Standard will be driven to financial ruin by the action of the District; there is not even a contention that this particular facility will be forced to operate at a loss and close. It is true that Standard will not be able to produce as much fuel oil as it would want to and could produce. It may be that its operation of this facility will not be as profitable with three units as it could be with four. It may be that the return on its considerable investment will fall short of what it might have been. None of these circumstances, nor all of them, makes Standard's right to operate four units instead of three 'fundamental.'" (Fn. omitted.)

The same is true here. We cannot conclude that the application of a slightly different interest rate provision—which had the effect of lowering by approximately one dollar per space per month the City's staff's recommended capital improvement rent increase—implicated a fundamental vested right. Indeed, courts have consistently found that no one has a fundamental right to operate a business or own land free of government regulation. (*Whaler's Village Club v. California Coastal Com.*, *supra*, 173 Cal.App.3d at pp. 252–253.) *Palacio* does not compel a different result. There, after directly inquiring about and relying on particular city rent control provisions then in effect, the plaintiff purchased an apartment complex. He thereafter petitioned the city for a hardship rent increase on the basis of a provision that had allowed for the inclusion of purchase money financing interest payments as allowable costs for the purpose of calculating net operating income. (*Palacio*, *supra*, 209 Cal.App.3d at p. 119.) After the city denied his request and the trial court denied his petition for writ of mandate, but before judgment was entered, the city adopted a provision repealing the rent control provision on which the plaintiff had relied. (*Id.* at p. 120.) The court determined that the repeal of the previously applicable provision did not moot the plaintiff's appeal, but nor did the rent control provisions create a statutory right of action. "Rather, those enactments created land-use property rights which became vested in Palacio when the financing of the

apartment purchase was undertaken in reliance on the existing rent-control laws. In this sense, Palacio enjoys a situation or status analogous to that of one who has established the right to pursue a nonconforming use on land following a zoning change. [Citation.]” (*Ibid.*)

We agree with the trial court that the factual showing made by appellant does not approach that made by the plaintiff in *Palacio*. Beyond stating at the hearing that its predecessor must have acted in reliance on the interest rate provision at the time it submitted its capital improvement rent increase application, appellant offered no evidence that its predecessor inquired about and actually relied on the Guideline in implementing the capital improvements. Rather, as pointed out by the trial court, appellant “has merely shown that the rate existed at the time of its CI Application.” Absent evidence of actual and reasonable reliance, appellant had no vested right in the Guidelines’ previous interest rate provision. (See *E.W.A.P., Inc. v. City of Los Angeles*, *supra*, 56 Cal.App.4th at p. 326 [the appellant’s statement in his declaration that a restriction on operating hours would result in a 25 to 30 percent reduction in revenue, without any supporting factual evidence in the form of time-dated cash receipts or percentage of customers affected, constituted mere speculation].)

But even if appellant had offered some evidence of its or its predecessor’s reliance on the Guidelines’ interest rate provision, such reliance would not have been reasonable. The revised Guideline, section VI, subdivision C., addressed how to calculate allowable interest on Park Owner financed capital improvements. A preceding Guideline, however, explained how to calculate a monthly rent increase based on a capital improvement expense, outlining the formula: “Cost of the capital improvement, including interest, divided by the amortization period; the result of that calculation divided by twelve (12) months; and the result of that calculation by the number of all spaces.” (Guidelines, § VI, subd. B.2.) Following that provision, as well as one directing that “a capital improvement should not be amortized over a period which would yield a monthly per space increase of over ten percent” (Guidelines, § VI, subd. B.3.), the Guidelines specified the scope of the Board’s discretion: “Notwithstanding the subsections above,

based upon the circumstances of a particular case, the Board shall have the discretion to determine capital improvement costs or appropriate amortization in any alternative manner necessary to protect the residents of the mobilehome park from excessive rents while ensuring the park owner receives a fair return.” (Guidelines, § VI, subd. B.4.)

Though appellant correctly observes that this discretionary provision applies to “subsections above” and therefore not to the interest rate calculation provision in section VI, subdivision C. below, one of the above subsections expressly defined capital improvement costs to include interest. (Guidelines, § VI, subd. B.2.) Accordingly, the Board at all times retained discretion to determine capital improvement costs, including the appropriate rate of interest, so as to impose a fair, just and reasonable rent increase.

In sum, we agree with the trial court’s conclusion: “[Appellant] did not have a right to a 10% interest rate over the amortization period; it only had a right to a rate that ensured a fair return. The Board was entitled to use its discretion to reduce the interest rate from a legal rate to 7.32% if necessary and so long as the rate provided a fair return. [Appellant] has made no argument that the 7.32% rate does not ensure a fair return.” Appellant failed to demonstrate it had a vested right to any particular interest rate or that the Board lacked discretion to employ whatever rate of interest would yield fair capital improvement rent increase.

### **DISPOSITION**

The judgment is affirmed. Respondent is entitled to its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
DOI TODD

We concur:

\_\_\_\_\_, P. J.  
BOREN

\_\_\_\_\_, J.  
CHAVEZ